

# COURTHOUSE NEWS

A Summary of Topical Highlights from decisions of the  
U.S. District Court for the District of Oregon

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## Jury Trial

Plaintiff alleged claims of pregnancy discrimination under Title VII of the Civil Rights Act of 1964 and Or. Rev. Stat. § 659.030. Plaintiff claimed that defendant terminated her employment due to her pregnancy, and that defendant's stated reasons for her termination were pretextual. After a four-day jury trial, the jury found in favor of defendant and awarded no damages.

Fulkerson v. AmeriTitle, Inc., CV 00-6154-AA

(Jury Trial: January 26-30, 2004)

Plaintiff's Counsel:

Roxanne L. Farra

Defense Counsel:

Chris Kitchel and Daniel K. Reising

## Breach of Contract

Plaintiff worked for many years as a Supervisor at defendant's facility. During the course of her employment, plaintiff was made aware of defendant's at-will employment policy and its requirement that only the President or Plant Manager can modify those terms and must do so in writing. The Plant Manager asked plaintiff to

take a new position, a promotion which would require a lot of training. When plaintiff expressed apprehension over her ability to do the new job, the Plant Manager told her that she could return to Supervisor, but she must maintain her performance level. Eleven months later, plaintiff was terminated by the Plant Manager's successor for deficient performance in the new job. Judge King denied defendant's motion for summary judgment against plaintiff's breach of contract claim, holding that she had raised a factual issue on the Plant Manager's authority to modify the contract and on whether his statement was sufficient on which to base a contract modification.

Jorgenson v. Oregon Potato

Company, CV 03-604-KI,

(Opinion, February 24, 2004)

Plaintiff's Counsel:

Michael Ross

Defense Counsel:

Scott Cliff

## Sheridan Summit

The District of Oregon's  
Criminal Matters

Committee sponsored the first ever Criminal Justice Solutions Summit on January 28, 2004. The Summit was held at the Sheridan Federal Correctional Institution's training center, in Sheridan, Oregon. Over 80 congressional, academic, criminal justice, and social services representatives were in attendance.

Attendees included Chris Maloney, Chief of the Programs Services Branch of the Office of Probation and Pretrial Services, Washington, D.C., and Joyce Conley, The Bureau of Prisons' Senior Deputy Director of Programs Administration, Washington, D.C. Both provided excellent overview of national issues and initiatives.

FCI Sheridan Warden Charles A. Daniels, Chief U.S. Probation Officer Eric P. Suing, and Senior U.S. Probation Officer Russell Scharn provided an overview of the major issues currently facing Oregon's criminal justice system. The

## 2 The Courthouse News

afternoon session was spent in groups discussing issues related to Oregon's growing methamphetamine problems, lack of transitional resources; mental health and drug treatment resources; and a drug court concept targeting supervised release and probation violators.

At the scheduled February 6, 2004, Criminal Procedures Committee meeting in Eugene, the following work groups were formed as a result of the Summit: Methamphetamine Use in Oregon, chaired by U.S. Attorney Karin J. Immergut and First Assistant U.S. Attorney Baron C. Sheldahl; Transitional Services from Incarceration to Community, chaired by Chief U.S. Probation Officer Eric P. Suing; Drug Court, chaired by Federal Public Defender Steven T. Wax; and the Honorable Ann Aiken, U.S. District Judge, Deputy Chief U.S. Probation Officer Sam F. Wedge, and Assistant Federal Public Defender Mark Weintraub will work in conjunction with Multnomah County Mental Health Group in developing Mental Health and Substance Abuse Resources. Meetings of these committees will be held in the near future. If you are interested in joining one of these groups, please contact

Jolie Russo, at (503) 326-8252, or by e-mail at Jolie\_Russo@ord.uscourts.gov. We need your insight and ideas, and encourage your involvement. A meeting is planned for June 2004 to reconvene and review the various committees' work. The Committee wishes to thank Judge Ann Aiken for her leadership and support of the Summit.

Submitted by Eric Suing, Chief U.S. Probation Officer

### Jury Trial

Plaintiffs, who are current and former Wal-Mart employees, brought this action against Wal-Mart, claiming that Wal-Mart engaged in a pattern or practice of suffering or permitting its employees to work "off the clock" without compensation. Plaintiffs also claimed that Wal-Mart edited or made changes to payroll records in order to reduce the hours for which it would have to pay plaintiffs. Plaintiffs' motions for class certification were denied, but the case was allowed to proceed as a collective action under the Fair Labor Standards Act. The court also accepted supplemental jurisdiction over plaintiffs'

state law wage and hour claims.

In November 2002, the court bifurcated the case into two separate trials on liability and damages. In December 2002, after a three-week trial and four days of deliberations, a jury returned a verdict finding that Wal-Mart engaged in a pattern or practice of suffering or permitting its employees to work off the clock without compensation in 18 Wal-Mart stores in Oregon in each of the years 1994-1999. The jury also found that Wal-Mart acted willfully with respect to the pattern or practice.

A second jury was impaneled to determine the underlying facts necessary for damages awards. The amount of the damages award in the case is yet to be determined. Thiebes, et al, v. Wal-Mart Stores, Inc., CV 98-802-KI Plaintiffs' Counsel:

James Piotrowski,  
Rebecca Roe, William  
Rutzick, Shane Youtz  
Defense Counsel:

Rudy Englund, David  
Hosenpud, Leah Lively